

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

MARISA DESCHINE, et al.,

Plaintiffs,

vs.

CIV 14-0018 MV/KBM

THE UNITED STATES OF AMERICA,

Defendant.

**ORDER STAYING DISCOVERY**

THIS MATTER is before the Court on Defendant's opposed Motion to Stay Discovery (*Doc. 33*) and Defendant's unopposed Motion to Extend Time to Disclose Its Expert Witnesses (*Doc. 44*). Having reviewed the submissions of the parties, the Court finds that the motions are well taken and should be granted.

This case arises from allegations of medical malpractice by Dr. Maureen Kidd. In this FTCA lawsuit, Plaintiffs allege that Dr. Kidd was an employee of Defendant United States at the time of the alleged malpractice. Defendant maintains that Dr. Kidd was not an employee under the Federal Tort Claims Act and has filed a Motion to Dismiss (*Doc. 32*), which is now ready for a ruling by presiding District Judge Vázquez.

In an effort to protect the malpractice claims from a statute of limitations bar in the event Dr. Kidd is deemed not to have been an employee of the United States, Plaintiffs filed a separate lawsuit styled *Deschine v. Kidd*, CIV 14-0762 KBM/GBW and have moved to consolidate it with this case (*Doc. 38*). The later-filed action brings suit against Dr. Kidd and her alleged employer at the relevant time, Locumtenes.com, LLC, who have yet to file answers or otherwise respond to that complaint.

Plaintiffs contend that even though Dr. Kidd was not an employee of Defendant here, she might be “deemed” to be an employee for FTCA purposes under certain circumstances and that limited discovery is required to ascertain whether such circumstances exist in this case. See *Doc. 41*. I agree with the government, however, that

[i]f Plaintiffs believe they needed discovery to respond to the Motion to Dismiss, essentially requesting that the Motion to Dismiss be treated as a motion for summary judgment, the Federal Rules of Civil Procedure direct Plaintiffs on how to proceed. The Federal Rules require a party to show by affidavit or declaration the specified reasons they cannot present facts essential to justify their position. Fed. R. Civ. P. 56(d).

*Doc. 48* at 2. Moreover, the Court is persuaded that following the general rule of staying discovery until issues of jurisdiction are resolved will preserve the resources of the parties and promote judicial economy.

Wherefore,

IT IS HEREBY ORDERED that discovery in this matter is STAYED, and that Defendant’s expert witness disclosures will be due 30 days after the Court rules on the Motion to Dismiss, if it is denied.

  
UNITED STATES CHIEF MAGISTRATE JUDGE